IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

WP(C).No. 25660 of 2007(S)

AGAINST THE ORDER DATED 17/07/2007 IN EA.33/03 IN EP.28/03 IN OP.76/1994 of FAMILY COURT, THIRUVALLA

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PETITIONER:

ANNAMMA PAULOSE, AGED 59 YEARS,
W/O. M.C. PAULOSE, MARANGATTU, NIRANAM P.O.,
KADAPRA VILLAGE, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.JOSEPH GEORGE

RESPONDENTS:
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1. HELEN VARGHESE,
ROSE VILLA, PANDALAM VILLAGE, PANDALAM P.O.

2. P.D. VARGHESE,
PUTHENPURACKAL HOUSE, MEZHUVELI VILLAGE,
PATHANAMTHITTA DISTRICT.

BY ADV. DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SRI.K.K.RAJEEV

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS -

P1 - TRUE PHOTOCOPY OF ORDER DT. 12.2.97 IN OP 76/1994 OF THE DISTRICT COURT, PATHANAMTHITTA.

P2 - TRUE PHOTOCOPY OF CLAIM PETITION FILED BY THE PETITIONER.

P3 - TRUE PHOTOCOPY OF OBJECTION FILED BY THE 1ST RESPONDENT.

P4 - CARBON COPY OF ORDER DT. 17.7.07 IN EA 33/03 OF THE FAMILY COURT, THIRUVALLA.

P5 - PHOTOCOPY OF CLAIM PETITION IN OP (DIV) 76/1994.

RESPONDENTS' EXHIBIT -

R1(a) - TRUE COPY OF THE UDAMPADY NO.1339 OF 1122 ME (1947 AD) DATED 3rd VRISCHIKAM 1122 ME.

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

W.P.(C) 25660 OF 2007-S

Dated: November 27, 2007

JUDGMENT

Harun-Ul-Rashid, J.

The petitioner in this writ petition is the claimant/petitioner in E.A.33/2003 in E.P.28/2003 in O.P.76/1994. The 1st respondent herein who is the wife of the 2nd respondent obtained an order in I.A.No.583/1996 in O.P.(Divorce) No.76/1994 (Ext.P1) as follows:-

> "In the result this petition is allowed directing the respondent (petitioner in O.P.(Divorce) NO.76/1994) to pay interim alimony at the rate of Rs.2000/- per mensem to the petitioner (the counter petitioner in O.P.(Divorce) No.76/1994) from the date of filing of the original petition.

2. The 1st respondent initiated execution proceedings to execute the above said order and sought to attach an item of property having 30 cents in extent which is the subject matter of Ext.P4 order. The petitioner herein filed E.A.No.33/2003 under Order 21 Rule 58 claiming right over the property sought to be sold in execution of the above order. According to the claimant/petitioner, the property originally belongs to the parents of the petitioner and the 2nd respondent who is her brother. In 1992 both parents died and the property devolved on the petitioner and her brother (the 2nd respondent herein) in equal shares. Before the court below the pleadings are contradictory to what is submitted before this court. The contention

before the court below was that the property under attachment was assigned to her at the time of her marriage in1967 as share and thus she is the absolute owner in possession of the property. At the time of hearing of the matter before the court below, the petitioner took a contrary stand stating that the property was bequeathed to her under a will produced as Ext.A1. The court below, after examining the evidence on record, dismissed the claim petition finding that the claimant failed to prove her right over the property and, therefore, not entitled to the relief claimed.

3. Exts.A2 and A3 death certificates prove that the parents of respondents 1 and 2 are no more and that they died in the year 1992. The 2nd respondent has no case that this property during their lifetime was assigned to him. The case set up by the petitioner before the court below was turned down for the reason that there is no evidence to prove her contention that this property was assigned to her by an oral assignment in the year 1967 or she got right over the property by virtue of Ext.A1 will. Therefore the only conclusion that can be arrived at is that the property sought to be sold for realisation of the amounts due to the 1st respondent is the property devolved on the 2nd respondent and his sister as legal heirs. In the circumstances the contention raised by the claimant/petitioner has some force. We are of the view that the question whether she also inherit the property of her parents along with the 2nd respondent, her brother, is a matter to be re-examined by the court in the light of the fact

that both son and daughter inherit equally the properties left behind by their parents. Therefore, though we are not satisfied with the way in which the pleadings are raised by the claimant/petitioner and her contradictory stand taken before the court below, in the interests of justice we are of the view that an opportunity shall be given to the petitioner to substantiate her case that she has got one-half right over the property. The court below shall examine the question and pass orders within four months from the date of receipt of a copy of this judgment. The parties shall appear before the Family Court, Thiruvalla on 17.12.2007. The writ petition is disposed of accordingly.

Transmit the records immediately.

KURIAN JOSEPH
JUDGE

HARUN-UL-RASHID
JUDGE.

mt/-